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No. 15414

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United States  
Court of Appeals  
for the Ninth Circuit

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PETER HOLZ, also known as Peter Holz-Muller,  
Appellant,

vs.

ALBERT DEL GUERCIO, Acting District Director of Immigration and Naturalization at Los Angeles, California and JOSEPH A. DUMMEL, Special Inquiry Officer, Immigration Service at Los Angeles, Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

MAR 12 1957

PAUL P. O'BRIEN, CLERK



No. 15414

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United States  
Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Assistant United States Attorney,  
600 Federal Building,  
Los Angeles 12, California.



In the United States District Court for the Southern District of California, Central Division

Civil Action No. 18907-Y

PETER HOLZ, also known as PETER HOLZ-  
MULLER, Petitioner,

VS.

ALBERT DEL GUERCIO, Acting District Director of Immigration and Naturalization at Los Angeles, California, and JOSEPH A. DUMMEL, Special Inquiry Officer, Immigration Service at Los Angeles, Respondents.

PETITION FOR JUDICIAL REVIEW, DE-  
CLARATORY JUDGMENT AND INJUNC-  
TIVE RELIEF

The petitioner, Peter Holz, also known as Peter Holz-Muller, hereinafter designated as Peter Holz, respectfully alleges:

## I.

This is an action for Judicial Review under the Administrative Procedure Act (5 U.S.C. 100 et seq.) for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for injunctive relief, and for judicial review of:

(1) A final order granting petitioner voluntary departure from the United States with the added provision that petitioner be deported if he does not depart voluntarily;

(2) The administrative processes of the Immigration and Naturalization Service; and

(3) An order of the said service denying a stay of deportation pending a determination of petitioner's petition to reopen and reconsider the order of the Special Inquiry Officer entered June 7, 1954.

## II.

The respondent, Albert Del Guercio, is the Acting District Director of Immigration and Naturalization at Los Angeles, California, and respondent, Joseph A. Dummel, is a Special Inquiry Officer attached to said Immigration and Naturalization Service.

## III.

Petitioner was born on April 30, 1931, at Banat, Rumania, and is a citizen of Rumania.

## IV.

Petitioner is now married to a legal resident of the United States, has established a home, and is regularly employed as a machinist in the County of Los Angeles, State of California.

Petitioner's ancestry is French-German and his religion, as well as that of his parents, is Roman Catholic. He was admitted to the United States for permanent residence at New York, New York, on May 27, 1950, upon presentation of non-preference quota immigration visa No. 22650 issued to him by the American Vice Consul at Munich, Germany, on April 15, 1950. Petitioner's father, mother and only sister reside in the County of Los Angeles, State of California, they having emigrated to the United States with him.

## V.

Prior to the onset of World War II, and, more particularly, on or about June 29, 1939, because of the unrest in Rumania and the persecution of persons of German ancestry, he went with his family to Vienna, Austria. From there the family went to Krefeld, Germany, in August, 1939. Because of the bombings suffered in Krefeld, petitioner and his family returned to Vienna where they remained until June, 1942. Petitioner and his family then returned to Banat, Rumania where they remained until September 25, 1944. They were forced to flee Banat to escape the Russian occupation. They arrived in Vienna on or about October 14, 1944. During his stay in Vienna, he was subject to constant bombings. On April 15, 1945, he left Vienna with his family on account of the Russian occupation of the city.

During his entire youth he was constantly subjected first hand to the rigors of war and observed that both the German and Russian armies "impressed" natives into military service, and, when the area was recaptured by the Russians or Germans, as the case may be, these same natives who were "impressed" into service were executed by the reoccupying army on the ground that they had served as "volunteers."

## VI.

Petitioner arrived in New York on May 27, 1950 and left immediately for California where he lived with his parents as caretakers on a ranch in Thousand Oaks, California. On August 7, 1950, he

registered at Local Board No. 83 of the Selective Service System, located at 239 East Olive Ave., Burbank, California and on December 18, 1950, upon his application, he received a declaration of intention to become a citizen of the United States issued by the Clerk of the United States District Court at Los Angeles, California.

## VII.

On or about March 4, 1952, he received a notice from the aforementioned local board ordering him to report to the local board for induction. Petitioner at said time spoke practically no English and, at the present time, his knowledge of the English language is meager. Petitioner stated to the members of the board that he did not object to induction but that he wanted to be a citizen before being inducted because he did not want to be classified as a volunteer because, if sent to areas where Russian troops were possible adversaries, he might be captured and treated in the same way as he had seen the Russians treat so-called "volunteers" in Rumania and Germany. At no time was petitioner represented by counsel nor did he understand his rights and duties.

## VIII.

At the time petitioner was called for induction, 50 U.S.C.A. App., Section 454, was in full force and effect. This section provides, among other things, that an alien shall be relieved from liability for training and service in the armed forces if, prior to his induction into the forces, he has made



application to be relieved from such liability in the manner prescribed by and in accordance with the rules and regulations prescribed by the President but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States. Petitioner was not advised of this section of the law nor was he able to comprehend the proceedings before the local draft board.

### IX.

Because of his youth and experiences as a child and inability to comprehend the language, petitioner felt he was being impressed into service in much the same manner as he had seen the Russians and Germans do it. However, on March 4, 1952, he reported to 1155 West Washington Blvd. in accordance with the induction order and again demanded to be made a citizen and repeated the reasons hereinabove set forth. He was interviewed by an officer of the United States Army and, upon information and belief, the officer told him to return to his home. He could not understand the reason for this but he went home. Thereafter he returned to his home and several days later, an agent of the Federal Bureau of Investigation appeared at Peter's place of work and stated that he would arrest Peter the following morning. Thereupon, in order to avoid arrest and without any plan or prearrangement, petitioner fled from his home and later crossed the international border into Mexico on April 2, 1952. He remained in Mexico until October, 1953. At all times while he was in Mexico,

his family and, upon information and belief, the Federal Bureau of Investigation knew of his whereabouts. He reentered the United States at El Paso, Texas, in October, 1953, and was admitted upon presentation of his alien registration card No. A7482554.

### X.

He then obtained a Mexican tourist visa from the Mexican Consulate at Los Angeles, California on October 19, 1953 and departed from the United States to Mexico in November, 1953 for the purpose of gathering his belongings which he had left in Mexico. He remained in Mexico for two weeks and returned to the United States via El Paso, Texas in November, 1953. He was again admitted to the United States upon presentation of his alien registration card. He reentered the United States for the purpose of clearing himself and for the purpose of entering one of the armed services of the United States. Upon returning to the United States, he went to the home of his parents where he remained until apprehended by a member of the Federal Bureau of Investigation in February, 1954. On March 3, 1954, a warrant of arrest was served on him charging him with violation of Section 241 (a) (1) of the Immigration and Nationality Act in that at the time of entering the United States he was within one or more of the classes of aliens excludable by law existing at the time of such entry, to wit: aliens who are immigrants not in possession of a valid unexpired immigrant visa, re-entry permit, border crossing identification card, or



other valid entry document, and not exempted from possession thereof by said act or regulations made thereunder under Section 212 (a) (20) of the Act and Section 241 (a) (1) of the Immigration and Nationality Act in that at the time of entry he was within one or more of the classes of aliens excludable by law existing at the time of such entry, to wit: aliens who are persons who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in time or war or a period declared by the President to be a national emergency under Section 212 (a) (22) of the Act. That petitioner was detained under authority of said warrant and was released from custody on or about March 3, 1954 on posting of a recognizance bond in the sum of \$1,000.00. That he is now and ever since the date of his release has been free on said recognizance bond.

#### XI.

That subsequent thereto and on April 9, 1954, proceedings in deportation were held before respondent, Joseph A. Dummel, Special Inquiry Officer, who thereafter on June 7, 1954 rendered his written decision in which he determined:

(1) That the respondent is an alien, a native and citizen of Romania;

(2) That the respondent was admitted to the United States for permanent residence at New York, New York, May 27, 1950 upon presentation of a Nonpreference Quota Immigration Visa;

(3) That the respondent last entered the United

States at El Paso, Texas during November, 1953, and was admitted upon presentation of Alien Registration Card No. A7 482 554;

(4) That the respondent was registered for military service in the United States under the Selective Service Act of 1948, during August, 1950, and was classified 1A on January 4, 1951;

(5) That the respondent was called for induction into the military forces of the United States in March, 1952, but refused to be inducted unless he was first made a citizen of the United States;

(6) That the respondent departed from the United States on April 2, 1952 to Mexico, where he remained for approximately 18 months, for the purpose of avoiding or evading military training and service in the armed forces of the United States;

(7) That the respondent entered the United States at El Paso, Texas during November, 1953 for the purpose of resuming residence;

(8) That the alien registration card presented by the respondent at the time of his entry and admission to the United States at El Paso, Texas during November, 1953 was not valid for his admission to the United States as a returning resident.

## XII.

That said Special Inquiry Officer further determined under the basis of the foregoing findings of fact:

(1) That under Section 241 (a) (1) of the Immigration and Nationality Act, the respondent is

subject to deportation, in that, at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit: aliens who are immigrants not in possession of a valid unexpired visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act or regulations made thereunder, under Section 212 (a) (20) of the Act;

(2) That under Section 241 (a) (1) of the Immigration and Nationality Act, respondent is subject to deportation, in that, at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit: aliens who are persons who have departed from, or who have remained outside of the United States to avoid or evade training or service in the armed forces of the United States in time of war, or a period declared by the president to be a national emergency under Section 212 (a) (22) of the Act.

### XIII.

That said Special Inquiry Officer further ordered:

Order: It is ordered that the alien be granted voluntary departure at his own expense in lieu of deportation within such period of time or authorized extensions thereof, and under such conditions as the District Director or Officer in Charge having administrative jurisdiction of the office in which the case is pending shall direct.

It is further ordered that if the alien fails to

depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the alien deported from the United States in the manner provided by law under charges contained in the warrant of arrest.

#### XIV.

That said Special Inquiry Officer did err as a matter of law in his determination in finding that petitioner violated Sections 241 (a) (1), et seq. of the Immigration and Nationality Act by reason of the facts hereinabove set forth at length in the previous paragraphs of this petition and by reason of the fact that at no time was petitioner represented by counsel prior to the deportation proceedings held before the Special Inquiry Officer. Further, that petitioner at no time knew the nature of the charges made against him. For the further reason that petitioner was not permitted to sign a waiver of the requirement to serve in the military forces as provided by Title 50, Appendix Section 454, as hereinabove set forth. That petitioner was entrapped, goaded and harassed into fleeing from the jurisdiction of this court by the actions of the United States Government, its agents, servants and employees, particularly in view of the fact that he was present in the draft board reporting for induction and could have been restrained at said time; that the findings of said Special Inquiry Officer are absolutely without foundation and contrary to the uncontradicted evidence in the case.

## XV.

Petitioner did perfect his appeal to the Immigration Board of Appeals of said Immigration and Naturalization Service in Washington, D. C., and said Board did, on the 29th of November, 1954, affirm the order of deportation of said Special Inquiry Officer with the right of voluntary departure.

## XVI.

That pursuant to the provisions of law, petitioner did, on or about March 12, 1955, file his petition to reopen and reconsider the decision of the Special Inquiry Officer dated June 7, 1954 and for further relief as provided in said petition. That said petition was filed pursuant to the provisions of Section 811, C. F. R.

## XVII.

That as part of said petition, your petitioner did respectfully request that the deportation order be suspended on the ground of hardship based upon the fact of his marriage and that all his family was present in the United States.

## XVIII.

That said petition further recites as grounds for reopening that the said Special Inquiry Officer erred in his decision which determined that petitioner be deported for the reasons hereinabove set forth at length.

## XIX.

That on March 14, 1955, your petitioner was advised on behalf of the Acting District Director of



Immigration at Los Angeles as follows:

Your motion to reopen and reconsider the above case has been forwarded to the Board of Immigration Appeals. This office does not propose to stay enforcement of the outstanding order pending decision on the motion and the Board has been so informed.

It is noted that our letter of December 9, 1954 required this alien to appear personally at Room 222 on or before March 10, 1955 to present a valid travel document and a reservation for transportation if he wished to avail himself of the voluntary departure privilege. This he has failed to do. Unless such evidence is presented within the very near future it will be necessary to invoke the deportation provision of the order in this case and proceed accordingly.

## XX.

That the Special Inquiry Officer was not qualified to hold said deportation hearing in that he was not appointed pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 1001, et seq.).

## XXI.

That the Order of deportation of said Special Inquiry Officer is void as being in violation of law, specifically the Administrative Procedure Act (Section 5, U.S.C., 1001, et seq.).

## XII.

That said Immigration and Naturalization Service intends to and will, unless restrained by this court, deport your petitioner from the United

States pending a determination of the Board of Immigration Appeals of his petition to reopen and reconsider, which is predicated upon the reasons hereinabove set forth. That the deportation of your petitioner from the United States, pending a determination of this petition, and of his petition to the Board of Immigration Appeals, under the provisions of law, will deny petitioner herein due process of law in that his deportation will be effected prior to a determination of his eligibility for relief under the provisions of law.

Wherefore, petitioner prays for judgment:

1. Declaring that the deportation hearing was unfair, null and void, and not supported by substantial, probative evidence.
2. Declaring that the order granting voluntary departure in lieu of deportation was null and void.
3. Declaring that the petitioner is not subject to deportation under the hearing afforded him by said Special Inquiry Officer.
4. Restraining the respondents from taking petitioner into custody and deporting him.
5. Granting such other and further relief as may be just and appropriate.

GROSS AND SVENSON,

/s/ By H. J. GROSS,

Attorneys for Petitioner

Duly Verified.

[Endorsed]: Filed October 19, 1955.

[Title of District Court and Cause.]

## ANSWER TO PETITION

The respondents above named, by and through the undersigned, in answer to the Petition for Judicial Review, Declaratory Judgment and Injunctive Relief, on file herein, admit, deny, and allege as follows:

### I.

Neither admit nor deny the allegations contained in Paragraph I, on the grounds that said allegations are conclusions of law.

### II.

Admit the allegations contained in Paragraph II, except that respondents deny that Albert Del Guercio named in said Paragraph is the Acting District Director of Immigration and Naturalization at Los Angeles, California. Instead respondents allege that respondent, Albert Del Guercio, is Officer in Charge, Immigration and Naturalization Service, Los Angeles, California.

### III.

Admit the allegations contained in Paragraph III.

### IV.

Admit the allegations contained in the third sentence of Paragraph IV. Except as expressly admitted herein, respondents have no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in



Paragraph IV, and on that ground, deny said allegations.

V.

Respondents have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph V, and on that ground, deny each and every allegation contained in said Paragraph.

VI.

Admit the allegations contained in Paragraph VI, except that portion alleging that petitioner left immediately for California where he lived with his parents as caretakers on a ranch in Thousand Oaks, California. As to the excepted portion, respondents have no knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that ground, deny said allegations.

VII.

Admit the first sentence contained in Paragraph VII. Except as expressly admitted herein, respondents have no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph VII, and on that ground, deny said allegations.

VIII.

Neither admit nor deny the allegations contained in Paragraph VIII on the ground that said allegations are conclusions of law.

IX.

Admit that petitioner fled from his home and

later crossed the international border into Mexico on April 2, 1952; that he remained in Mexico until October, 1953; and respondents further admit the last sentence contained in Paragraph IX. Except as expressly admitted herein, respondents have no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph IX, and on that ground, deny said allegations. Respondents further allege that petitioner departed from the United States to Mexico on April 2, 1952, where he remained for approximately eighteen months, for the purpose of avoiding or evading military training and service in the armed forces of the United States.

#### X.

Answering Paragraph X, respondents admit the first sentence contained in Paragraph X down to and including the date "November, 1953" on line 10. Respondents further admit the second, third, sixth, seventh and eighth sentences contained in Paragraph X. Except as expressly admitted herein, respondents have no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph X, and on that ground, deny said remaining allegations.

#### XI.

Admit the allegations contained in Paragraphs XI, XII, XIII, XV, XVI, XVII, XVIII, and XIX.

#### XII.

Deny each and every allegation contained in Paragraphs XIV, XX, and XXI.

## XIII.

Respondents deny each and every allegation contained in Paragraph XXII and further allege that on April 1, 1955, the Board of Immigration Appeals denied the Petition to Reopen and Reconsider referred to in said Paragraph. Respondents also allege that they will take no action to deport petitioner from the United States until the within judicial proceedings are terminated.

For a further, separate, and first affirmative defense to said petition, respondents allege:

## I.

The petitioner has been accorded a full and fair hearing in conformity with law to determine his right to be and remain in the United States. There will be offered in evidence when this matter comes on for trial a certified record of the Immigration and Naturalization Service, Department of Justice, relating to the petitioner herein, containing the complete record of the deportation proceedings before the Immigration and Naturalization Service.

For a further, separate, and second affirmative defense to said petition, respondents allege:

## I.

The Petition for Judicial Review, Declaratory Judgment and Injunctive Relief on file herein fails to state a claim upon which relief can be granted.

Wherefore, respondents pray for a judgment dismissing said Petition, denying the relief prayed

for therein, and for such other relief as to the Court seems just and proper in the premises.

LAUGHLIN E. WATERS,  
United States Attorney

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief of Civil Division

/s/ JAMES R. DOOLEY,  
Assistant U. S. Attorney  
Attorneys for Petitioner

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 9, 1955.

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In the United States District Court for the South-  
ern District of California, Central Division

No. 18907-WB Civil

PETER HOLZ, also known as PETER HOLZ-  
MULLER, Petitioner,

vs.

ALBERT DEL GUERCIO, Acting District Direc-  
tor of Immigration and Naturalization at Los  
Angeles, California, and JOSEPH A. DUM-  
MEL, Special Inquiry Officer, Immigration  
Service at Los Angeles, Respondents.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND JUDGMENT

The above entitled matter having come on for

trial on July 31, 1956 in the above entitled Court before the Hon. William M. Bryne, Judge presiding without a jury; the petitioner being represented by his attorneys, Gross and Svenson by H. J. Gross, and the respondents being represented by their attorneys, Laughlin E. Waters, United States Attorney, Max F. Deutz and James R. Dooley, Assistant U. S. Attorneys by James R. Dooley, and counsel for the parties hereto having stipulated that an authenticated record of deportation proceedings relating to the petitioner should be received in evidence, and the Court having received the same; and the Court having heard the arguments of counsel, and having taken the within cause under submission; and the Court having reviewed the aforementioned record of deportation proceedings relating to the petitioner, and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

### Findings of Fact

#### I.

Petitioner is an alien, a native and citizen of Rumania. He last entered the United States during November, 1953.

#### II.

On March 3, 1953 a warrant of arrest was issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, charging that the petitioner was subject to deportation on the following charges:

"Sec. 241(a)(1) of the Immigration and National-



ity Act, in that, at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit: aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act or regulations made thereunder, under sec. 212(a)(20) of the Act."

"Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are persons who have departed from or have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency under sec. 212(a)(22) of the Act."

### III.

Pursuant to said warrant of arrest, a deportation hearing was held at Los Angeles, California, on April 9, 1954; and on June 7, 1954, the Special Inquiry Officer who presided at this hearing rendered his decision, ordering that the petitioner be granted voluntary departure, but that if petitioner failed to depart when and as required, the privilege of voluntary departure should be withdrawn without further notice or proceedings and the petitioner deported from the United States in the manner provided by law under the charges contained in the warrant of arrest.

## IV.

On June 17, 1954 an appeal was taken by the petitioner from the decision of the Special Inquiry Officer; and on November 29, 1954, the Board of Immigration Appeals rendered its decision, dismissing plaintiff's appeal.

## V.

Thereafter, the petitioner filed a Petition to Reopen and Reconsider the Order of the Special Inquiry Officer entered on June 7, 1954; and on April 1, 1955 this Petition was denied by the Board of Immigration Appeals.

## VI.

There is reasonable, substantial and probative evidence to support the decision of deportability and the order of deportation outstanding against the petitioner.

## VII.

The officials who acted in connection with the deportation proceedings relating to petitioner had jurisdiction and authority to act.

## VIII.

The deportation proceedings relating to the petitioner were fair, were in accordance with law, and did not contravene any of petitioner's constitutional rights.

## Conclusions of Law

## I.

This Court has jurisdiction of the within cause under the provisions of Section 10 of the Act of

June 11, 1946 (Administrative Procedure Act), 60 Stat. 243, 5 U.S.C.A. §1009.

## II.

There is reasonable, substantial and probative evidence to support the decision of deportability and the order of deportation outstanding against the petitioner.

## III.

The officials who acted in connection with the deportation proceedings relating to petitioner had jurisdiction and authority to act.

## IV.

The deportation proceedings relating to the petitioner were in accordance with law, and did not contravene any of petitioner's constitutional rights.

## V.

The order of deportation outstanding against the petitioner is valid, and petitioner is deportable pursuant to said order.

## VI.

Judgment should be entered in favor of the respondents and against the petitioner, denying the relief prayed for in petitioner's Complaint and awarding to the respondents their costs and disbursements.

## Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It is Ordered, Adjudged and Decreed:

1. That judgment be, and the same is hereby



entered in favor of the respondents and against the petitioner, denying the relief prayed for in petitioner's Complaint entitled "Petition for Judicial Review, Declaratory Judgment and Injunctive Relief".

2. That the respondents have their costs incurred herein, taxed at \$20.00.

Dated: This 4th day of September, 1956.

/s/ WM. M. BYRNE,

Judge, U. S. District Court

Affidavit of Service by Mail attached.

[Endorsed]: Lodged August 20, 1956. Entered and Filed September 4, 1956.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Peter Holz, also known as Peter Holz-Muller, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment given, made and entered in the above entitled action in favor of the Respondents herein and against the Petitioner herein, and from the whole and every part of said judgment.

Dated: October 16, 1956.

GROSS AND SVENSON,

/s/ By H. J. GROSS,

Attorneys for Petitioner

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 26, 1956.

[Title of District Court and Cause.]

## STATEMENT OF POINTS ON APPEAL

The points upon which Petitioner-Appellant will rely on appeal are:

### I.

The court erred in giving judgment for the Respondents.

### II.

The court erred in finding that there was reasonable, substantial and probative evidence to support the decision of deportability and the order of deportation outstanding against the petitioner.

### III.

The court erred in finding that the officials who acted in connection with the deportation proceedings relating to petitioner had jurisdiction and authority to act.

### IV.

The court erred in finding that the deportation proceedings relating to the petitioner were fair, were in accordance with law, and did not contravene any of petitioner's constitutional rights.

### V.

The court erred in concluding that there was reasonable, substantial and probative evidence to support the decision of deportability and the order of deportation outstanding against the petitioner.

### VI.

The court erred in concluding that the officials

who acted in connection with the deportation proceedings relating to petitioner had jurisdiction and authority to act.

### VII.

The court erred in concluding that the deportation proceedings relating to the petitioner were in accordance with law and did not contravene any of petitioner's constitutional rights and that the order of deportation outstanding against the petitioner is valid, and that petitioner is deportable pursuant to said order.

### VIII.

The court erred in not submitting the matter upon the authenticated record of deportation proceedings held before Joseph A. Dummel, Special Inquiry Officer of the Immigration Service at Los Angeles and in not hearing the within petition *de novo*.

### IX.

The evidence was insufficient to support the verdict and judgment in favor of the Respondents.

Dated: October 31st, 1956.

GROSS AND SVENSON,

/s/ By H. J. GROSS,

Attorneys for Petitioner-Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 14, 1956.

[Title of District Court and Cause.]

## DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75 (a) of Federal Rules of Civil Procedure, the Petitioner-Appellant hereby designates for inclusion on the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed October 26, 1956 the following in this case to be included in the record on appeal:

### I.

Petition for Judicial Review, Declaratory Judgment and Injunctive Relief.

### II.

Answer to Petition.

### III.

Findings of Fact and Conclusions of Law.

### IV.

Judgment.

### V.

Exhibit offered by Respondents, consisting of the authenticated record of Deportation Proceedings relating to the Petitioner, received in evidence pursuant to stipulation.

### VI.

All statements of the court and counsel made and reported at the time of the argument of the matter before the court on July 31, 1956.

VII.

Statement of Points on Appeal.

VIII.

This Designation of Record.

Dated: October 31st, 1956.

GROSS AND SVENSON,

/s/ By H. J. GROSS,

Attorneys for Petitioner and  
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 14, 1956.

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[Title of District Court and Cause.]

AFFIDAVIT AND ORDER EXTENDING  
TIME FOR PREPARATION AND FILING  
REPORTER'S TRANSCRIPT ON APPEAL  
AND FOR DOCKETING RECORD ON AP-  
PEAL

Whereas, the petitioner Peter Holz, also known as Peter Holz-Muller, has appealed from the judgment made and entered in the above entitled action to the United States Court of Appeals for the Ninth Circuit, and

Whereas, the official reporter, Thomas B. Goodwill, has been extremely busy and has been and will be unable to complete the reporter's transcript or any record on appeal in the above entitled action within the initial time prescribed by Rule 73 (g)

of Federal Rules of Civil Procedure and that it is necessary and imperative that the time so fixed be extended by an order of the above entitled court, as provided in said Rule, to and including January 23, 1957,

Now, therefore, by reason of the facts and circumstances above stated, petitioner prays that the above entitled court may enter its ex parte order, pursuant to Rule 73 (g) of Federal Rules of Civil Procedure, extending the time to file the record on appeal and docket said appeal to and including January 23, 1957.

Dated: December 3, 1956.

/s/ H. J. GROSS,

Attorney for Petitioner-Appellant.

### AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION

State of California

County of Los Angeles—ss.

H. J. Gross, being first duly sworn, deposes and says:

That he is the attorney for the petitioner-appellant herein; that he has been advised by the office of the clerk of the District Court that it will be impossible for the official reporter to complete the record on appeal within the time prescribed by law.

Wherefore, affiant respectfully prays that the court make its ex parte order extending the time



within which the record on appeal may be filed and docketed to January 23, 1957.

/s/ H. J. GROSS

Subscribed and sworn to before me this 3rd day of December, 1956.

[Seal]      PATRICIA ARKIN,  
Notary Public in and for said County and State.

### ORDER

Upon reading the foregoing affidavit and preamble, and good cause appearing therefor, it is hereby ordered that the time for filing the record on appeal and docketing the appeal in the above entitled action may be and is hereby extended to and including January 23, 1957, pursuant to Rule 73 (g) of Federal Rules of Civil Procedure.

Dated: December 5, 1956.

/s/ WM. M. BYRNE,  
Judge

[Endorsed]: Filed December 5, 1956.

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[Title of District Court and Cause.]

### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 38, inclusive, containing the original

Petition;

Answer;

Findings of Fact, Conclusions of Law and Judgment;

Notice of Appeal;

Statement of Points on Appeal;

Designation of Contents of Record on Appeal;

Affidavit and Order Thereon Extending Time for Docketing Record on Appeal;

B. One volume of Reporter's Official Transcript of proceedings had on July 31, 1956;

C. Defendant's Exhibit A.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 17th day of January, 1957.

[Seal]

JOHN A. CHILDRESS,  
Clerk

/s/ By CHARLES E. JONES,  
Deputy



No. 18907-WB—Civil

vs.

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

Appearances: Attorneys for Petitioner: Gross and  
Svenson, By: Harry J. Gross, 14545 Sylvan Street,  
Van Nuys, California; Attorneys for Respondents:  
Laughlin E. Waters, United States Attorney, Max  
F. Deutz, Assistant United States Attorney, Chief  
of Civil Division, James R. Dooley, Assistant  
United States Attorney, by James R. Dooley, Assist-  
ant United States Attorney, 600 Federal Building,  
312 North Spring Street, Los Angeles 12, Calif. [2\*]

The Clerk: No. 18907-WB Civil, Peter Holz, also known as Peter Holz-Muller, vs. Albert Del Guercio et al., for Court trial.

Mr. Dooley: Ready for the respondents, your Honor.

\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Mr. Gross: H. J. Gross, of Gross and Svenson, for the petitioner.

The Court: You may proceed.

Mr. Dooley: Your Honor, Counsel for the plaintiff and for the defendants have stipulated that a certified copy of the records of the Immigration and Naturalization Service relating to Peter Holz, File No. A7 482 554, might be received in evidence, and I would request, your Honor, that it be marked as a defendants' exhibit so that it can be withdrawn by the defendants.

Mr. Gross: It is so stipulated.

The Court: Very well. It will be received and marked Defendants' Exhibit A.

(Said file was received in evidence and marked as Defendants' Exhibit A.)

The Court: Do both sides rest?

Mr. Gross: May I address the Court on this subject of resting, for just a minute. Perhaps this [3] would be more in the nature of argument, but coming into this thing as we did after the preliminary hearing, and not speaking now about the U. S. Attorney's office, but ourselves, we appeared at the hearing, I want the record to indicate that, I had hoped originally that we could have a hearing de novo under the Landon Case, because as I understand the law now, there must be a clear and convincing record to uphold the decision of the Administrative tribunal. However, most of my remarks are going to be argument on that record. Having said that, I have nothing further to say at this time.

The Court: Well, it is like any other lawsuit except, of course, this is a judicial review. After you have presented what evidence there is to present, and you have presented here the record and both sides rest, then you may argue it, if you care to.

Now, of course, it isn't a trial de novo and may not be tried as a trial de novo.

However, at times there may possibly be some evidence and I always ask counsel if they rest. As an illustration, it may be that the petitioner was not permitted to cross examine a witness at the hearing, let us say, and he can testify to that here.

When we say there may not be a trial de novo, that means there may not be a trial going to the merits of the action here, on the question of whether or not he is deportable. [4] But in a judicial review, the thing the Court reviews is, first, whether there was reasonable, substantial, and probative evidence to support the finding of the Hearing Officer, and whether he had a fair hearing, so the Court doesn't determine the question that was determined at the hearing, de novo.

But, as an illustration, it might be that he would say that he asked if he could have an attorney and they told him he wasn't permitted to have an attorney. Then he could testify to that. That is what I mean, when I say it is possible that there might be other evidence, but this Court doesn't try the question that was tried at the hearing. The Court just reviews it like a Court of Appeals reviews it. That is the Court's position, to review.

So, if you both rest at this time, you may proceed with your argument.

Mr. Gross: Well, I will rest, your Honor.

Mr. Dooley: The respondents rest, your Honor.

The Court: All right. You may proceed with your argument.

Mr. Gross: I do not know whether the Court has examined the file.

The Court: I have examined the file, although neither party has filed a trial memorandum. In the future, we will have pre-trials on these. [5]

Mr. Gross: That, frankly speaking, is what we have been expecting. I am not using this as a crutch, as your Honor knows from my appearances before you, I try not to be technical and try to follow the rules, but I was under the impression that we would have this pre-trial, and it was called up. I am ready. I don't want to say I am not. But John Garvin came in last week. We had this week to get ready on it.

The Court: Ordinarily there isn't much to be had at pre-trial, unless there are unusual questions, and the Court then has a pre-trial memorandum and ordinarily in these matters we have trial memorandums, but there is no trial memorandum here in this case. However, it isn't necessary.

You may proceed with your argument.

Mr. Gross: I did not want to belabor the Court with the entire record.

Now, in this particular case, we were called in about nine days prior to the hearing, the formal

hearing before Mr. Dummel, who was the Hearing Officer for the Department of Immigration. All prior proceedings were had before Counsel came into the picture.

I wish to tell the Court this is the kind of a case that you don't touch without feeling, but we feel rather strongly about it. It is perhaps like representing people who may be Communists or something; you examine it and you have to get a [6] feeling about it.

In this particular case, we are in a situation where Gross and Svenson find a man who is charged with refusing to serve or leaving this country for the purpose of evading military service.

You will find in the record a rather complete medical examination from a Dr. Louise J. Gordy.

Peter Holz, at the time of this alleged act, was twenty years old. He was born in Romania. Mr. Holz is in the Courtroom. Some people at twenty are rather mature. Some are young. Mr. Holz, will you stand up.

(The petitioner rises in the Courtroom.)

Mr. Gross: This is Mr. Holz. Thank you.

Mr. Holz was born in 1931 and spent his boyhood running between the Germans, the Russians, and the Romanians, on account of the war, and after the war he came to the United States and couldn't speak English very well, and no sooner did he get here as a displaced person when he was ordered into military service.

His experience at the time led him into a number of things which perhaps shouldn't have been



done. I don't believe for one moment that, as suggested by the record, he left the United States to escape military service. I think Peter Holz was escaping from everybody and everything. He had seen conscription in Russia and in Germany of the [7] same people, in both armies, and when Peter Holz left the United States, it was after a threat from the Department of Justice that if he did not appear for induction he would be arrested.

I think we have to visualize a young man who doesn't speak English very well. He comes into the United States through the offices of his church and through our functions on which we are brought up here, and then he goes through the same things that he escaped from. His early life was a rather interesting thing. I ask your Honor to look at it.

I try to put myself in the position of what I would do if the situation were reversed.

Now, in this particular case, this young boy who came here as our ward had a right, and that right is this, that if he wanted to, all he had to do was to give up his right to becoming a citizen and he could stand Pat and he did not have to serve in the military service. Your Honor, I submit to you that that is the law. All he would have to do is tell the draft board, "Well, I have made an application for my first papers," so-called. As we understand, that is nothing at the present time, and he would be permitted to stay here and he could not be forced into the military service or drafted, and while he might not be admired from my standpoint, if that were the case, I probably wouldn't be here today. But,

instead he was never offered this opportunity. He met with an overzealous draft board. Now, that is the part that [8] is not in the record. That is the part that is so important here.

He knew something about this. He tried to communicate this to the draft board, and he met an overzealous draft board. He felt perhaps that American boys so-called were in there fighting and he should be, too, particularly since he was in this country as a ward, since he had been picked up and brought here. He was never given this opportunity, and from that point on there were a series of harassments of this young man, and there must have been a dozen incidents here, finally culminating with where he picks up and he goes to Mexico.

You will find in the record where the Hearing Officer asks him:

“Well, you went to Mexico to avoid serving in the army?”

That is not a direct quote. It doesn't purport to be.

And he answers, “Yes.”

I think you will find other evidence in there, as far as we were permitted to bring it out, that he was in the Induction Center. Now, that is the important thing, your Honor. All they had to do at the time was to keep him there, but they permitted him to go home and to think it over. As a commander in the Judge Advocate General's office, I find this difficult to understand. If we had someone delivered or received there for induction and he was a little unhappy about getting into [9] the



Navy, I submit, your Honor, his unhappiness would continue right where he was. Now, the record will indicate that he was there. He said he didn't want to serve, he wanted to become a citizen so that if he were sent to Germany and picked up by the Russians, he would not be shot. He had seen that occur over there and there is no denial on this record that he would not be shot as a Russian serving in the enemy forces.

He had no citizenship. He had no counsel. Now, that must be something!

So, instead of saying, "Look, you are in here, whatever rights you had you waived, you did not assert your right at a time when you could have," they said, "You got to go home and think about it."

And there is something else in the record. Then he received a visit from the FBI and he was told that if he did not report the following morning, he would be arrested. I think we better relate to the Court, there is something in there, and at that point he fled.

Now, to recapitulate my argument, the reason that we are interested in this thing is that although I very strongly feel that anybody who was brought here under the conditions that he was brought here should be grateful and should be the first one in it, I do feel that we should give him a fair shake in the way we do things.

Now, right there is where he got some very "fancy" advice, [10] probably from his family. He felt himself hemmed in on all sides, and there was a letter written to the draft board or to the Depart-

ment of Immigration saying that he intended to return to Germany, anyhow. Your Honor will find that letter in there. That letter and this statement in answer to a direct question by the Hearing Officer that he left the United States to avoid fighting are the only things in this record which will support the finding of the Administrator.

I make that reference to that letter for this reason, that it was an act of despair and desperation of a boy who did not know where he was going. He was at the crest of a perplexing point.

If he had come to me and if I had represented him at the time, I would have told him, "All you have to do is not claim citizenship and refuse to serve, and that is the end of this thing, and just that, and do not go across the line." But instead of that, this was never made clear to the boy. He never received an opportunity in this.

And from that point on, there was a period of a year and a half of harassment, the like of which I haven't seen for a long time.

Now, you might say, "Well, he should serve." That is probably the point under consideration.

The point is, I don't think he for one minute recognized what his rights were, and I don't think for one minute if he [11] had recognized his rights, he would have made this terror-stricken run over the border to Mexico, particularly since he was in contact with his family all the time, writing back and forth, and when the FBI came to find out where this "fugitive" was, his mother and father, and the record I think bears this out, supplied his address.

They knew where he was. He wasn't in any sense running away. Well, I guess he was—he was hiding from a terror he could not understand.

Now, I have had my say. I want your Honor to see the record, not to feel the way I do about it, but to see why I am here.

There has been some suggestion that these proceedings were brought for purposes of delay, and I concede that they are in some cases. This thing is not conceived for delay and I wouldn't be down here for delay.

I think there has been a miscarriage of justice in this case, your Honor, and that is why we are here.

Thank you very much.

Mr. Dooley: At the outset, I would like to mention to the Court that there are two charges that are contained in the warrant of arrest rather than one. The first charge is that the plaintiff, at the time that he entered the United States in 1953, did not have a proper entry document such as a visa or a passport and therefore he was ineligible to enter the United States; and the second charge is that he was ineligible [12] to enter the United States because he had departed from the United States to avoid training and service in the armed forces during time of war or during emergency. I believe it is well to keep both charges in mind because either charge is sufficient to sustain the Order for Deportation.

The Court: His time of departure, when was that, during the Korean War?

Mr. Dooley: It was during the Korean conflict.

I think the Court will take judicial notice that the Korean conflict commenced June of 1950 and continued, I believe, until about July of 1953, the hostilities, and as I understand it, a state of emergency was declared by the President on December 16, 1950, and continued and probably it is even still in effect, I am not sure, but it was in effect throughout the alien's stay in Mexico. So, the dates are probably rather important there.

Plaintiff departed on April 2, 1952. The record is undisputed that he remained in Mexico continuously from April 2 until about October of 1953, a period of approximately eighteen months.

Now, the regulations provide that an alien who has been admitted to the United States for permanent residence is excused from having a visa when he goes to a place like Mexico only if he remains there for six months or less. The regulation is quoted in the decision of the Board of [13] Immigration Appeals in detail.

Now, the plaintiff having remained in Mexico for approximately eighteen months, was required to obtain a visa before returning to the United States. It is admitted that he did not have this visa when he came back to the United States; therefore, when he entered in October of 1953, and incidentally, he went back to Mexico for a short period in November and came back again in November of 1953, at the time of his entry in October of 1953, he was without the proper entry documents and therefore his entry was illegal.

And on the first ground, there would seem to be

no dispute as to his deportability. Clearly there is reasonable, substantial and probative evidence, if not conclusive evidence, that he is illegally in the United States, on the first charge of the warrant of arrest.

Now, in the record, in the motion made by plaintiff to the Board of Immigration Appeals, appeal by plaintiff to the Board of Immigration Appeals, it is suggested that the plaintiff didn't know that he was required to have a visa and that he had gone to the Consulate Officials and that they had misinformed him as to what he was required to have. It is submitted that even if the plaintiff assumed that he was given misinformation as to the documents that he was required to have, it should not operate as an estoppel against the Government to permit him to enter the United States without [14] the proper entry documents. Now, that would seem to cover the first ground of deportation.

Now, the second ground as I mentioned was that he had previously departed from the United States in order to avoid military service during time of war. Now, on that ground it is interesting to note the chronology of events. Going back until the time that he first arrived in the United States from Germany in 1950, he was admitted to the United States on May 27, 1950, for permanent residence.

On August 7, 1950, he registered for the draft.

On December 18, 1950, he obtained a Declaration of Intention which indicated his desire to acquire United States citizenship. At that time he evidently intended to acquire United States citizenship.



On March 4, 1953, he received a notice from the local draft board ordering him to report for induction.

And on March 7, 1952, he wrote a letter, at least a letter was received at the Immigration and Naturalization Service, Washington, D. C., in which the plaintiff returned his Declaration of Intention. When returning his Declaration of Intention he states as follows:

"Enclosed please find my 1st. Paper, I am sending back to your office.

"The reason is, I have a Legacy in Germany and I would not be able to take out the Legacy of Germany, if I am an [15] American Citizen. After settling this matter, I would like to apply in future time for the 1st. Paper again."

It would seem rather significant that immediately after having been ordered to report for induction he decided that he did not wish to acquire American citizenship.

Then, on April 2, 1952, he departed from the United States.

It is shown in the file, from the petitioner's own admissions, that he departed from the United States in order to avoid service in the armed forces.

Exhibit 2 attached to the record is a statement made by petitioner before the Immigration and Naturalization Service, and on page 3 of this statement are the following questions and answers:

"Question. Had you been ordered to report for induction into the Armed Forces of the United

States prior to your departure to Mexico on April 2, 1952?

“Answer. It was much before that, about 14 days before that I was ordered to report for induction, and I did report. I went down to Washington Boulevard on the day they ordered me to come, but I didn’t go in the Army. I told them why and everything. They said I should go home and go back to work. And one morning the FBI man came and asked me if I understood, and told me that they were going to arrest me the next day. That [16] is when I left.

“Question. Then when you departed from the United States on April 2, 1952, at El Paso, Texas, did you depart for the purpose of avoiding service in the Armed Forces of the United States?

“Answer. Well, yes, I did.

“Question. Did you have any other reason for departing from the United States on April 2, 1952?

“Answer. No. I didn’t know anyone in Mexico or have any job, and I didn’t have any other reason to go there. I was scared, that’s all.”

Now, from the petitioner’s own admissions, we have reasonable, substantial, and probative evidence that he departed for the purpose of avoiding military service.

Now, Counsel for the plaintiff has mentioned the fact that at the time petitioner went to the draft board he demanded that he be made a citizen prior to being drafted into the Army. Of course, it is submitted that he had no right to impose such a condition precedent to his being subjected to the draft.



But, his demand for citizenship at that particular time before being inducted is inconsistent with his action in returning the Declaration of Intention to the Immigration and Naturalization Service stating that he did not want American citizenship because he had a legacy in Germany which he would not be able to acquire with American [17] citizenship.

Now, counsel for the plaintiff has also mentioned the hardships that the plaintiff endured during his youth and referred to the doctor's report. It is significant that in the doctor's report, which is marked as Exhibit No. 4, most of this report is obviously on what the petitioner told the doctor, who was a psychiatrist, concerning his prior hardships. Since at that time deportation proceedings had already been commenced, the rule that he passed going to a physician after the commencement of litigation and giving subjective symptoms is probably not entitled to much weight. Of course, being an Administrative Proceeding, this document wouldn't be admissible.

But the most significant portion of this medical report appears on the last page, in the last paragraph, which reads as follows:

"From the psychiatric standpoint, there is no evidence in the examination of any mental enfeeblement or psychosis. He is intelligent, but still has difficulty with the language. He is neatly dressed, quiet in manner, not voluble, and exhibited no emotional outbursts or exaggerated emotional responses in telling his story. He expressed only a minimum of self-pity and made no bid for sympathy because

of his childhood war experiences, although it is apparent they left an indelible [18] impression on him. He is not depressed but is very much discouraged at this time. There is no evidence of any constitutional psychopathy or psychopathic personality.”

I did not complete reading the last paragraph.

From a medical standpoint, I believe that the last paragraph states that at the time of the examination at least he was suffering from no psychopathic neurotic condition, and certainly the remainder of the report is merely a recitation of the history of his past life, which evidently the petitioner told the doctor.

In view of these facts, it is submitted that there is reasonable, substantial, and probative evidence to support both the charges contained in the warrant of arrest and the Order of Deportation.

Mr. Gross: May I reply, your Honor?

The Court: Yes.

Mr. Gross: The U. S. Attorney has spoken of Dr. Gordy's report. As I heard him read it, I found some comfort in that, your Honor, he is not mentally diseased, he is not psychotic, and he is not a neurotic. I don't think there is any question about his war time experiences. If it had not been for those, he wouldn't have been admitted as he was. These displaced people are brought here for the very reason that they have had these experiences. He had his between the ages of eight and eighteen or eight and fifteen, whatever it was. They were [19] rather gruesome. They are set out here. If he

were a psychotic or a neurotic or if he were mentally diseased, he wouldn't be here. That is No. 1.

No. 2: Your Honor, at this hearing, they asked him, "Did you leave the country for the purpose of evading service?" Now, at that time he was represented by counsel, by us. I think you know far better than I do that when a man comes into an office and he speaks to his attorney, his attorney questions him at length and then points out to him the position that he is in. Now, there has been no effort by our office or by anyone to suggest, "Well, this is the way you answer the question." But, here is a leading question taken out of context, saying, "Well, you left for the purpose of evading service?" Well, I think that is all right. I am not admitting that he did, but if they asked it in that manner, there was only one truthful answer unless he perjured himself, because he was frantic, and there isn't any dispute in the record that the FBI called at his house on a number of occasions.

The Court: I don't understand what you are arguing, Mr. Gross. If he didn't leave to avoid military service, what did he leave for?

Mr. Gross: I think that the record will indicate, because he was in contact with his family and he came back. He left to avoid a terror, not to avoid service. He was willing to serve. [20] .

The Court: Now, when you say he left for terror, if it was a case where he was down at the office of the military authorities and they talked to him and he got steamed up and went home, I can understand that, and after he got home and calmed down,

he decided he made an error, when he got frantic about this thing, and went back the next morning and apologized for his acts, and so forth, I can understand that, because of his background. It is clear from his background experience, he didn't want to go into the service. But, when he went away and stayed and lived a year and a half in a foreign country and endured the difficulties that a person would by going and living in a foreign country, where you say he had no friends, that terror didn't continue for a year and a half, and it shouldn't have if that is what the record says. I haven't read the record yet, but I am just going by what you are telling me and what Mr. Dooley has to say. It is difficult for me to understand that.

All I am stating is that it would be simple for me to understand how a young man, who was surrounded in quarters where there were military authorities, if he is going into service, gets to thinking of that, he gets panicky and he runs home and two or three or four or five hours later he realizes that was not the answer, that was a silly thing to do, and then he goes back the next day, but any time a person goes away for a year and a half, he does not remain panicky, [21] panic-stricken for a year and a half. So there was only one reason why he stayed down there and that was to avoid military service. He told the truth when he said that.

Mr. Gross: I hope your Honor isn't committed to that idea.

The Court: What is that?

Mr. Gross: I say, I hope your Honor isn't committed to that idea.

The Court: Now, that is the way it appears to me. Now, you tell me what other purpose there possibly could be. Do you mean he went down there for a year and a half, just cringing behind some door down there?

Mr. Gross: Quite to the contrary, your Honor. Not only was he not cringing behind a door there, but I think it is an accepted fact that at all times they knew where he was. I think you have to take the view that he misconstrued the situation in the light of his experience, your Honor.

The Court: Why did he stay there a year and a half? Tell me that. I don't want to argue with you, but if I can see your point when I read this record, it may be helpful. Why did he stay there a year and a half if it was not to keep out of the service, to keep from going over to Korea?

Mr. Gross: This is my point, he was up against something he didn't understand and this was the only way that he could handle that situation. You might say that he did this to [22] avoid military service, your Honor. Now, I am having difficulty getting the point across which is vital to me. He went into the induction office. He was in there. He appeared, now, this boy, by himself, without counsel. Now, I think I can represent to the Court we certainly did not represent him and as far as I have been able to find out, no one represented him, he had no legal advice at all. He went over there and said, "Well, this thing happened. I have seen



people shot. I have seen these massacres. I can't serve. I don't want to serve." He is there for induction, right at the station, so they said, "Well, go on home, think about it."

So one day he gets threatened with arrest and so he runs for cover.

If someone had given him advice, and this I would not appreciate if they had, but if someone had explained to him that he did not have to serve if he did not want to, if he gave up his cherished right of citizenship, that is one thing. But I think that in dealing with the United States Government, the Government has a right to expect a certain, I think someone called it a rectangular corner-cutting, you got to turn sharp turns in dealing with the Government, the Government thinking the way it should be, but the Government has to deal with us in that way, too.

The Court: I think I see your point now. In other words, it is that because of this experience that he had over in Europe, the terrible experience, he just did not want to [23] serve and it had a different effect on him than it has on the ordinary person, because of that experience, and he just couldn't accept that and because of the great effect on him, that caused him to flee. Is that your position? I might say this, in that respect, you understand I don't blame him for that. That could be true, that while he may have had such experience that even death might be preferable to him than putting on a uniform, so he couldn't be punished for not serving. But, on the other hand, our laws

are such that if he doesn't accept the responsibilities in this country, regardless of the reasons why, then, he cannot accept the benefits of this country. That is the purpose of our laws. So that doesn't alter the fact that he told the truth.

As a matter of fact, from what I get of the record here, he has been very truthful apparently. All through it seems quite clear to me and it fits right into what he said. I don't doubt but what when he went there he had a dread.

There are a great many American boys who don't want to serve. There are a great many American boys that don't want to put on a uniform, and there is just a limit as to how far they go, though, to keep out of the service. There aren't very many of them that go to strange countries or to Mexico and stay down there a year and a half and wait and sit the war out rather than serve. Now, perhaps he would not have gone that far if it wasn't for this experience that you [24] speak of that he had over there. It is true he had a dread of war and he had a dread of putting on that uniform. But that is neither here nor there. The point is that he didn't and there is no distinction made under our laws.

Mr. Gross: He had an experience here, too, your Honor. That is more important than his background.

The Court: All right. Well, I haven't read the record.

Mr. Gross: I haven't tried to set forth this record. It wouldn't be fair to your Honor who reads



it. Perhaps he knows something about court martials. There is a way of coercing people.

The Court: I don't know. I don't understand why you would say "coercing". If you are inferring that this Government coerced him, you made reference a few moments ago to the fact that he could avoid service by filing a form that would excuse him from service and relinquishing any right to ever become a citizen.

Mr. Gross: That is true.

The Court: Of the United States. Well, that is true, but assuming he had done that, it doesn't change his position. The only thing is, he is not being prosecuted here, no one is attempting to send him to jail. All the Government is attempting to do is to get him out of the United States, but now he has changed his mind, now that the war is over, he wants to stay here. He didn't want to stay here before. [25]

Mr. Gross: That is the way I feel in 99 $\frac{3}{4}$  percent of the cases, but I say this, your Honor: maybe you see my point and don't agree with me. This has happened many times, but my thought is this, when you see a series of events, your Honor, when a man tries to obtain citizenship which he is not entitled to because he is afraid, because if he went into the service, he was afraid if he were captured he would be shot, and that is what the record indicates, that if he then tries to go for his first papers and they won't let him have them, and they come to his home and say, "We are going to arrest" him, he finds

himself up against a Goliath he doesn't understand, that is the difficulty.

The Court: But, Mr. Gross, don't you see that this is simple. I don't like to get into an argument with you on this thing, but on the thing you are talking about, if what they did subjected him to criminal prosecution and you were standing before me now and I was to sentence him for a crime, I would see the merit in your argument.

You say here he was, he was willing to give up his right to citizenship, and so forth, and then they used this duress. Duress for what? They did not use any duress on him.

As far as he was concerned, if what resulted brought him before me today to be sentenced to prison, then, I would say there was merit to it, that if he was brought into that position today, he couldn't be sentenced to prison, but the [26] only question before me today is that he receives what he was seeking at that time. In other words, he didn't want to become a citizen of the United States, he didn't want to stay in this country if he had to go to war in Korea, so he left the country voluntarily, and you say it was because he was afraid. Well, whether he was afraid or not, nothing was going to happen to him. He left the country and he stayed away a year and a half until the war was over in Korea, and now he comes back here. He isn't coming back to be punished, and he isn't before me to be punished.

The only thing is, the Government now says in

effect, "You didn't want to be a citizen of the United States, you didn't want to fulfill the obligations of a citizen of the United States, nor did you want to fulfill the obligation of an alien admitted to this country for permanent residence, so you departed and stayed away for a year and a half, until the war was all over in Korea, and now you come back and you say, well, you would like to have what you gave up then." So this country hasn't put any onus on him. They haven't put any burden on him, nor have they used any duress as you term it. Duress for what? I fail to follow your reasoning at all.

Mr. Gross: Well, may I have one more minute and then I will remain silent.

Your Honor has taken one facet of my argument, this fact [27] that he fled—let us call it a flight, but the record is also replete—first of all, we are not allowed to have an exact copy of this record. I was shown the record. If they show you a paper there, you sign a paper. You couldn't make a copy of this and I didn't. That is the best we can do in these things. But this boy starts out by saying, "I want to be a citizen, I want to go in and so they won't feel I am a volunteer." There is more in the record about that, decidedly more than there is about this later thought, "Well, fine, I don't want to be a citizen." Your Honor has taken one part but not the other. All along the line, he says, "Make me a citizen and I will go in, because I don't want to be picked up as a Russian." After all, this particular part of Sudetanland that became Germany or Russian does not want a person to have the right to be

in the army. That is in the record. He wanted to have a right to serve.

The Court: What do you mean by having a right to be in the army? You don't suppose the United States Government would have him in the army if he didn't have a right to be in the army. You don't suppose the fact that if he was in the army here, he was inducted without a right to be in the army?

Mr. Gross: I think I should be the last person in the world to question that, but he had been in Germany and in Russia where both sides had impressed the citizens into the [28] army, and if one impressed in the army were recaptured by re-occupying forces, he was shot, the people impressed in the army were shot as being enemy camp followers.

The Court: How old was he at this time?

Mr. Gross: He was born in 1930, '30 or '31.

The Court: And this was '52?

Mr. Gross: '51-'52.

The Court: 22 years old.

Mr. Gross: Well, I gathered the inference on this thing, but he had twelve years of this, your Honor, from 1939, or even before that they had the occupation there.

I have had my say here. I think this boy doesn't know what we have here, but he had been indoctrinated in Russia and Germany. That is why he was here.

That is the way I feel about it.

The Court: Of course, this boy may feel now that he may have made a mistake, but one thing I am sure of, this boy knows why he spent that year and a half down there in Mexico, to escape military service or just because he was afraid he wouldn't get a fair deal up here in this country. He knows in his own conscience why he spent that year and a half down there.

It is unbelievable that an intelligent person would go to a foreign country and spend a year and a half—As I indicated a few moments ago, true, it could be, and I could [29] accept that he would run away from home in terror, overnight, because his mind was in a state of confusion, and perhaps come back the next day. I will say he would even run away, get in a car or on a train or on a bus and go down into Mexico and even go so far as to stay a couple of days down there, with his mind in a state of confusion, because he felt that he was not going to get a fair deal, he didn't know why, it was just terror, but he doesn't sit there for a year and a half for that reason.

Mr. Gross: Depending on the collosus he is fighting.

The Court: Well, all right. It will be taken under submission.

[Endorsed]: Filed Dec. 4, 1956.



[Endorsed]: No. 15414. United States Court of Appeals for the Ninth Circuit. Peter Holz, also known as Peter Holz-Muller, Appellant, vs. Albert Del Guercio, Acting District Director of Immigration and Naturalization at Los Angeles, California and Joseph A. Dummel, Special Inquiry Officer, Immigration Service at Los Angeles, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: January 21, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15414

PETER HOLZ, also known as PETER HOLZ-  
MULLER, Petitioner,

vs.

ALBERT DEL GUERCIO, Acting District Di-  
rector of Immigration and Naturalization at  
Los Angeles, California, and JOSEPH A.  
DUMMEL, Special Inquiry Officer, Immigra-  
tion Service at Los Angeles, Respondents.

DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL

Appellant Peter Holz, also known as Peter Holz-  
Muller, by his attorneys Gross and Svenson, hereby  
adopts the Statement of Points on Appeal and the  
Designation of Contents of Record on Appeal ap-  
pearing in the typewritten transcript of the record.

Dated this 23rd day of January, 1957.

GROSS AND SVENSON,  
/s/ By H. J. GROSS,  
Attorneys for Petitioner and  
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 24, 1957. Paul P.  
O'Brien, Clerk.